

1 BALLARD SPAHR LLP
Ronald J. Stolkin (002552)
2 1 E. Washington St., Suite 2300
Phoenix, AZ 85004
3 Telephone: (602) 798-5400
Email: stolkinr@ballardspahr.com
4

5 *Attorney for Defendants*
Phoenix Rising FC, LLC; Arizona United
6 *Soccer Club, LLC; Michael McCoy; Robert Dulle;*
and Jane Doe Dulle
7

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

10 MICHAEL SAWYER,

11 Plaintiff,

12 vs.

13 PHOENIX RISING FC, LLC, an Arizona
limited liability company; ARIZONA
14 UNITED SOCCER CLUB, LLC d/b/a
PHOENIX RISING FOOTBALL CLUB
15 and d/b/a PHOENIX RISING FC, an
inactive Arizona limited liability company;
16 MICHAEL MCCOY, an individual;
ROBERT DULLE and JANE DOE
17 DULLE, a married couple;

18 Defendants.

No. CV 17-01860-JAT

**PARTIES' JOINT MEMORANDUM
OF LAW IN SUPPORT OF JOINT
MOTION FOR APPROVAL OF
SETTLEMENT AND DISMISSAL OF
CLAIMS WITH PREJUDICE**

19
20 Plaintiff Michael Sawyer (“Plaintiff”) and Defendants Phoenix Rising FC,
21 LLC, an Arizona limited liability company, (“PRFC”), Michael McCoy (“McCoy”), an
22 individual, and Robert Dulle (“Dulle”) and Teressa Elena Dulle, a married couple (“the
23 Dules”) (collectively, “the Parties”) have reached a settlement in this action, and jointly
24 submit this Memorandum in Support of Joint Motion for Approval of Settlement and
25 Dismissal of Claims with Prejudice (“Joint Motion”). Although the Parties dispute the
26 claims in this case, and Defendants deny each and every claim made by Plaintiff, the
27 Parties desire to fully and finally resolve any and all disputes regarding the claims in this
28 action without the expense of further litigation. The fully executed Settlement

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

1 Agreement and Release (“Settlement Agreement”) is attached to the Joint Motion as
2 Exhibit A. As discussed below, the proposed Settlement Agreement is a fair and
3 reasonable compromise of Plaintiff’s claims and warrants judicial approval.

4 I. BACKGROUND

5 A. Factual and Procedural History

6 Plaintiff is a former employee of PRFC, a professional soccer team based in
7 Phoenix. PRFC hired Plaintiff on February 1, 2017, and he held the position of Director
8 of Sales. (First Amended Complaint at ¶¶ 11 & 13).

9 On June 15, 2017, Plaintiff initiated this matter with this Court. Plaintiff
10 later filed a First Amended Complaint on July 3, 2017, alleging that Defendants violated
11 the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq*, and engaged in breach of
12 contract. Specifically, Plaintiff alleges that he was improperly designated as an exempt
13 employee and, therefore, not appropriately paid overtime for approximately 91 hours of
14 work. Plaintiff also that he was unlawfully retaliated against for raising issues related to
15 PRFC’s overtime practices and that PRFC breached a contract with him regarding his
16 health benefits. Defendants disagree with Plaintiff as to all allegations and maintain that
17 no contract was breached and PRFC appropriately designated Plaintiff as exempt and
18 paid Plaintiff for all time worked as required by the FLSA.

19 B. Settlement Negotiations

20 In late September 2017, the Parties entered into informal settlement
21 negotiations. Plaintiff calculated his estimated damages and shared those calculations
22 with Defendants. Thereafter, the Parties engaged in further discussions and exchanged
23 correspondence on the nature and scope of a possible settlement. At all times, Plaintiff
24 and the Defendants have been represented by counsel, who have advised them regarding
25 their rights and responsibilities with respect to the settlement of this matter. After
26 extensive settlement discussions, the Parties agreed to settle Plaintiff’s claims for the total
27 amount of \$15,000, inclusive of attorneys’ fees and costs, and thereafter memorialized
28 the terms of their agreement in the Settlement Agreement. (Ex. A). As of December 4,

2017, all Parties signed the Settlement Agreement. (Ex. A).

II. SUMMARY OF SETTLEMENT AGREEMENT

In exchange for the promises, agreements, and legal releases stated in the Settlement Agreement, PRFC agrees to pay the sum of Fifteen Thousand Dollars (\$15,000) to Plaintiff in full and complete settlement of Plaintiff's claims. (Ex. A at ¶ II(A)). The settlement amount includes attorneys' fees and costs. PRFC will make such payment within 20 days after this Court enters final approval of the settlement. (*Id.*).

In exchange for receiving these payments, Plaintiff has agreed to release Defendants from all claims arising under the FLSA claims under federal and state law arising out of his employment with PRFC. (*Id.* at ¶ III(A)). In addition, PRFC also released any and all claims against Plaintiff that it might have had. The mutual release covers claims only up to and including the date of this Court's approval of the Settlement Agreement. Any claim arising after that date has not been waived or released.

III. STANDARD OF REVIEW

The weight of judicial authority holds that employees' claims under the FLSA are non-waivable and thus may not be settled without supervision of either the Secretary of Labor or a district court. Barrentine v. Ark.-Best Freight Sys., Inc., 450 U.S. 728, 740 (1981); *Barrera v. US Airways Grp.*, No. 12-2278, 2014 U.S. Dist. LEXIS 198526, at *3 (D. Ariz. May 23, 2014); *Taylor v. AFS Techs., Inc.*, No. 09-2567, 2010 U.S. Dist. LEXIS 57851 (D. Ariz. May 24, 2010).

The proper procedure for obtaining court approval of the settlement of FLSA claims is for the parties to present to the district court a proposed settlement, upon which the court may enter a stipulated judgment approving the settlement and dismissing the plaintiff's claims after reviewing the settlement for fairness. *Schulte, Inc. v. Gangi*, 328 U.S. 108, 113 (1946); *Hand v. Dionex Corp.*, No. 06-1318, 2007 U.S. Dist. LEXIS 87026, at *1 (D. Ariz. Nov. 13, 2007) (noting that the Court "may approve settlement if it reflects a reasonable compromise over issues.") (internal quotations omitted).

Before this Court may approve the settlement, it must scrutinize the

1 settlement to determine whether it is “a fair and reasonable compromise of a bona fide
2 dispute under the FLSA.” *In re Sepracor Inc. Fair Labor Standards Act (FLSA) Litig.*,
3 2009 U.S. Dist. LEXIS 97791, at *2 (D. Ariz. Oct. 8, 2009) (quoting *Prater v. Commerce*
4 *Equities Mgmt. Co.*, 2008 U.S. Dist. LEXIS 98795, 2008 WL 5140045, at *2 (S.D. Tex.
5 Dec. 8, 2008)). Courts have found that a settlement agreement resolves a bona fide
6 dispute where there are genuine disputes between the parties as to whether a plaintiff was
7 an exempt employee and whether that plaintiff worked overtime hours. *See Barrera*,
8 2014 U.S. Dist. LEXIS 198526, at *3. Settlement of a bona fide dispute also requires
9 that the agreement not appear to be “the product of collusion between the parties, nor . . .
10 the result of fraud or overreaching on the part of Defendant.” *Id.*

11 IV. ARGUMENT

12 A. The Proposed Settlement Terms are Fair and Reasonable at this Stage of the
13 Proceedings in Relation to the Strength of Plaintiff’s Claims and Risks and
Expense of Further Litigation in this Bona Fide Dispute.

14 Here, the Settlement Agreement is a fair and reasonable resolution of a
15 bona fide dispute. After numerous discussions, the Parties continue to disagree on a
16 number of issues, including the critical issue of whether Plaintiff’s claims are viable and
17 whether he suffered any damages under the FLSA; Defendants deny that they are liable
18 to Plaintiffs under any such law. For example, Plaintiff claims that he was improperly
19 designated as an exempt employee. Defendants, however, vigorously dispute this claim,
20 arguing that Plaintiff was, as PRFC’s Director of Sales, responsible for supervising and
21 managing the sales staff. Thus, there can be no doubt that a bona fide dispute exists
22 between the Parties as to Plaintiff’s exempt status.

23 Despite such fundamental disagreements, the Parties have reached a
24 compromise that reflects the positions of both Parties with respect to potential litigation
25 costs and risks for each. *See Taylor*, 2010 U.S. Dist. LEXIS 57851, at *3 (finding
26 settlement agreement to be a fair and reasonable compromise of a bona fide dispute
27 where the defendants strongly contested liability under the FLSA). The settlement also
28 allows Plaintiff to recover as to his claims while avoiding the uncertainties and costs of

1 litigation. Here, Plaintiff has not yet obtained any finding of liability with respect to
2 Defendants. Plaintiff faces a number of issues with respect to establishing liability,
3 including, *inter alia*, showing that he was, in fact, not an exempt employee who
4 performed overtime hours worked that were unpaid in violation of the FLSA.

5 The Settlement Agreement also takes into account Plaintiff's potential
6 alleged damages under the FLSA. The FLSA provides for back pay and liquidated
7 damages in certain cases, together with costs and attorneys' fees. The settlement amount
8 in this case is an approximation of Plaintiff's alleged damages, determined through
9 settlement negotiation between the Parties at a very early stage of the litigation, before
10 the Parties incurred significant attorneys' fees and costs, and reflects the potential back
11 pay, plus additional payments such as attorneys' fees, litigation costs, and other allowable
12 damages, if any, that each Plaintiff is alleged to have suffered. *See In re Sepracor Inc.*
13 *Fair Labor Standards Act (FLSA) Litig.*, 2009 U.S. Dist. LEXIS 97791, at *7 (D. Ariz.
14 Oct. 8, 2009) (approving settlement where payments directly related to each plaintiff's
15 potential damages).

16 Thus, the settlement amount is fair and reasonable, as it reasonably takes
17 into account the alleged claims of Plaintiff and litigation risks present for both Parties.
18 Further, the Settlement Agreement represents a compromise on the part of the Parties, in
19 that they have agreed not to pursue this case to summary judgment and trial, and
20 therefore, each party has foregone the possibility that it may gain substantially more than
21 the Settlement Agreement provides, and also mitigated the possibility that it loses
22 substantially more.

23 B. The Settlement Agreement is the Product of Extensive, Arm's Length
24 Negotiations.

25 The Settlement Agreement is the product of arms' length bargaining
26 conducted by legal counsel experienced in the area of collective actions under the FLSA.
27 Both Plaintiff's and Defendants' counsel have extensive experience litigating FLSA cases
28 and both routinely litigate state and federal wage and hour cases in a variety of courts.

The Parties engaged in several settlement discussions over the course of about two months, which ultimately resulted in this proposed Settlement Agreement. The Parties agree that the settlement negotiated and reached by the Parties reflects a fair and reasonable resolution of the disputed issues. As explained above, the Settlement Agreement enables Plaintiff to obtain a recovery without further litigation and without incurring additional litigation costs and attorneys' fees, and is the product of a month long arms' length negotiation process. Accordingly, this Court should approve the Parties' proposed Settlement Agreement. *See In re Sepracor Inc. Fair Labor Standards Act (FLSA) Litig.*, 2009 U.S. Dist. LEXIS 97791, at *6 (D. Ariz. Oct. 8, 2009) ("The court may approve a settlement if it reflects a reasonable compromise over issues") (internal quotations omitted).

V. CONCLUSION

For the foregoing reasons, the Parties respectfully request that this Court grant the Joint Motion for Approval of Settlement and Dismissal of Claims with Prejudice.

By: /s/ Ronald J. Stolkin

Ronald J. Stolkin
BALLARD SPAHR LLP
1 E. Washington St., Suite 2300
Phoenix, AZ 85004
Telephone: (602) 798-5400

Attorneys for Defendants

Dated: December 11, 2017

By: /s/ Timothy Coons

Timothy Coons
DENTON PETERSON PC
1930 N. Arboleda Road, Suite 200
Mesa, Arizona 85213
Telephone: (480) 325-9900

Attorney for Plaintiff

Dated: December 11, 2017

CERTIFICATE OF SERVICE

I certify that on the 11th day of December, 2017, I electronically transmitted a PDF version of this document to the Office of the Clerk of the Court, using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants listed for this matter.

Timothy F. Coons
Denton Peterson, PC
1930 N. Arboleda Road, Suite 200
Mesa, AZ 85213
Timothy@dentonpeterson.com
Attorney for Plaintiff

By: /s/Ronald J. Stolkin

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555